

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	GRANT NUMBER (FAIN): 01J12901		DATE OF AWARD 11/23/2018
		MODIFICATION NUMBER: 2		MAILING DATE 11/23/2018
		PROGRAM CODE: DE		
		TYPE OF ACTION No Cost Amendment		ACH# X0069
PAYMENT METHOD:				
RECIPIENT TYPE: Indian Tribe		Send Payment Request to: Las Vegas Finance Center LVFC-grants@epa.gov		
RECIPIENT: Makah Indian Tribe of the Makah Indian Reservation P.O. Box 115 Neah Bay WA 98357-0115 EIN:		PAYEE: Makah Indian Tribe of the Makah Indian Reservation, Washington P.O. Box 115 Neah Bay, WA 98357-0115		
PROJECT MANAGER Mr. Dana Sarff P.O. Box 115 Neah Bay, WA 98357-0115 E-Mail: dana.sarff@makah.com Phone: 360-645-3151		EPA PROJECT OFFICER Lucita Valiere 1200 Sixth Avenue, Suite 155, AWT-150 Seattle, WA 98101-3140 E-Mail: valiere.lucita@epa.gov Phone: 206-553-8087		EPA GRANT SPECIALIST Lucas DuSablón 1200 Sixth Ave., Suite 155, OMP-173 Seattle, WA 98101-3140 E-Mail: dusablón.lucas@epa.gov Phone: 206-553-2987
PROJECT TITLE AND EXPLANATION OF CHANGES 2015 DERA Tribal - Makah Indian Tribe This amendment extends the project and budget periods through 6/30/2019, to complete the two remaining engine repowers on two remaining fishing fleet vessels.				
BUDGET PERIOD 04/01/2016 - 06/30/2019	PROJECT PERIOD 04/01/2016 - 06/30/2019	TOTAL BUDGET PERIOD COST \$858,365.00	TOTAL PROJECT PERIOD COST \$858,365.00	
NOTICE OF AWARD Based on your Application dated 07/15/2015 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$0. EPA agrees to cost-share 77.28% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$663,302. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.				
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS EPA Region 10 1200 Sixth Avenue, Suite 155 (17-C04) Seattle, WA 98101		ORGANIZATION / ADDRESS U.S. EPA, Region 10 Office of Air Waste and Toxics 1200 Sixth Avenue, Suite 155 Seattle, WA 98101-3140		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official Paula VanHaagen - Manager - Grants Unit				DATE 11/23/2018

EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 663,302	\$ 0	\$ 663,302
EPA In-Kind Amount	\$ 0	\$	\$ 0
Unexpended Prior Year Balance	\$ 0	\$	\$ 0
Other Federal Funds	\$ 0	\$	\$ 0
Recipient Contribution	\$ 0	\$	\$ 0
State Contribution	\$ 0	\$	\$ 0
Local Contribution	\$ 0	\$	\$ 0
Other Contribution	\$ 195,063	\$	\$ 195,063
Allowable Project Cost	\$ 858,365	\$ 0	\$ 858,365

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.039 - National Clean Diesel Funding Assistance Program (B)	Diesel Emissions Reduction Act of 2010 codified at 42 U.S.C. 16131 et seq	2 CFR 200 2 CFR 1500 and 40 CFR 33

[illegible]

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$55,101
2. Fringe Benefits	\$20,388
3. Travel	\$3,957
4. Equipment	\$0
5. Supplies	\$2,000
6. Contractual	\$776,919
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$858,365
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>22.72</u> % Federal <u>77.28</u> %.)	\$858,365
12. Total Approved Assistance Amount	\$663,302
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$0
15. Total EPA Amount Awarded To Date	\$663,302

Administrative Conditions

1. General Terms and Conditions - Updated 10-1-2018

The recipient agrees to comply with the current EPA general terms and conditions available at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2018>

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at

<http://www.epa.gov/grants/grant-terms-and-conditions>.

2. General Terms and Conditions - Consultant Cap - Additional Information

In addition to the General Terms and Conditions #6 "Consultant Cap", as of January 1, 2018, the limit is \$629.42 per day \$78.68 per hour.

NOTE: For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site:

<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/executive-senior-level>. Select "Salary and Wages", and select "Rates of Pay for the Executive Schedule". The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

3. General Terms and Conditions – Cybersecurity

The recipient agrees to comply with the current EPA general terms and conditions "Cybersecurity". The terms and conditions can be found on the EPA Grants Terms and Conditions Website.

For STATES:

http://www2.epa.gov/sites/production/files/2015-07/documents/state_grant_cyber_security_condition.pdf.

For TRIBES:

http://www2.epa.gov/sites/production/files/2015-07/documents/tribal_grant_cyber_security_condition.pdf.

For Other Recipients:

http://www2.epa.gov/sites/production/files/2015-07/documents/cyber_security_grant_condition_for_other_recipients.pdf.

4. General Terms and Conditions - Indirect Costs Not Included (All Organizations)

In addition to the General Terms and Conditions "Indirect Cost Rate Agreements", the cost principles of 2 CFR 200 Subpart E are applicable to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

5. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MBE/WBE)

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

MBE/WBE reporting is required in annual reports. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds

budgeted for direct procurement by the recipient or procurement under subwards or loans in the “Other” category that exceed the threshold amount of \$150,000., including amendments and/or modifications.

Based on EPA’s review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if recipient believes this award does not meet these conditions, the recipient must provide a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE reporting requirements to the Region 10 DBE Coordinator.

The recipient agrees to complete and submit a “MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements” report (EPA Form 5700-52A) on an annual basis. All procurement actions are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled “annual” in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the “last report” of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program’s Home Page at http://www.epa.gov/osbp/dbe_reporting.htm.

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

NATIVE AMERICAN PROVISIONS, 40 CFR, Section 33.304

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.304. Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

1. For Grant Awards \$250,000 or Less

This assistance agreement is a Technical Assistance Grant (TAG); or the award amount is \$250,000 or less; or the total dollar amount of all of the recipient's financial assistance agreements from EPA in the current Federal fiscal year is \$250,000 or less. Therefore, the recipient of this assistance agreement is exempt from the fair share objective requirements of 40 CFR, Part 33, Subpart D, and is not required to negotiate fair share objectives/goals for the utilization of MBE/WBEs in its procurements.

2. For Recipients Accepting Goals

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA. The Region 10 fair share objectives/goals can be found: http://www.epa.gov/osbp/pdfs/r10_fair_share_goals.pdf.

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed

MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

3. For Recipients with Established Goals

The recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Current Fair Share Objective/Goal

The dollar amount of this assistance agreement or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The Region 10 fair share objectives/goals can be found: http://www.epa.gov/osbp/pdfs/r10_fair_share_goals.pdf.

Negotiating Fair Share Objectives/Goals

In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

4. For DWSRF, CWSRF and BROWNFIELDS RLF Recipients ONLY

Objective/Goals of Loan Recipients

As a recipient of an EPA financial assistance agreement to capitalize revolving loan funds, the recipient agrees to either apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with its identified loan recipients. These separate objectives/goals must be based on demonstrable evidence of the availability of MBEs and WBEs in accordance with 40 CFR, Part 33, Subpart D.

The recipient agrees that if procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

R10 DBE Coordinator and Where to Send Report

Andrea Bennett at (206) 553-1789 or email: Bennett.Andrea@epa.gov. The coordinator can answer any MBE/WBE reporting questions you may have. MBE/WBE reports should be sent to the EPA Region 10, Grants and Interagency Agreements Unit, 1200 Sixth Avenue, Suite 155, OMP-173, Seattle, WA 98101 or FAX to (206) 553-4957.

6. Tribal Council Costs

With regard to payments to members of the Tribal Council, 2 CFR 200.444, provides that general costs of

government are unallowable, and subparagraph (a)(2) specifically includes in this prohibition salaries and expenses of tribal councils whether incurred for purposes of legislation or executive direction.

At the same time, however, the guidance includes other provisions which may or may not allow payment of grant funds to Council members:

(a) 2 CFR 200.422 Advisory Councils – Costs incurred by advisory councils or committees are unallowable unless authorized by statute or the awarding agency.

(b) 2 CFR 200.459 Professional Service Costs – Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the governmental unit, are allowable.

(c) 2 CFR 200.432 Conferences – Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the awarding agency.

(d) 2 CFR 200.444(b) General Costs of Government – For federally-recognized Indian tribal governments, the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff is allowable.

Any costs pertaining to the Tribal Council must be in accordance with 2 CFR 200 Subpart E. The recipient should refer to the entire paragraphs cited above and 2 CFR 200 in its entirety because the above are excerpts only, and other provisions could affect the allowability of costs. Documentation must be kept in your records as to how any of those costs charged to this grant fit with the above mentioned paragraphs and how the costs relate to the work plan components.

Programmatic Conditions

1. FY2015 Tribal Clean Diesel Program (DERA) Programmatic Terms and Conditions.

The recipient agrees to comply with the FY2015 Tribal DERA terms and conditions available at: http://www.epa.gov/ogd/tc/fy_15_dera_tribal_program.pdf. These terms and conditions are in addition to any award specific programmatic terms and conditions outlined directly on the award document.

Subparagraphs M of the standard programmatic condition is added as follows:

M. Mandatory Cost-Share Requirement

This award and the resulting federal funding share of **77.28%** as shown under "Notice of Award" above is based on estimated costs requested in the recipient's final approved workplan. While actual total costs may differ than those estimates, the recipient is required to provide no less than the cost-share percentages outlined below, as applicable, of the final equipment costs. EPA's participation shall not exceed the total amount of federal funds awarded or the maximum federal cost-share percentages outlined below, as applicable, of the final equipment costs. Recipients must satisfy any applicable cost share requirements with allowable costs as set forth in 2 CFR 200.306. The cost share requirements are as follows:

- M.1. Engine Upgrades: EPA will fund up to 75% of the cost (labor and equipment) of an eligible engine upgrade; recipient is responsible for cost-sharing at least 25% of the cost of an eligible engine upgrade.
- M.2. Idle Reduction Technologies on Locomotives: EPA will fund up to 40% of the cost (labor and equipment) of an eligible idle reduction technology on a locomotive; recipient is responsible for

- costsharing at least 60% of the cost of an eligible idle reduction technology on a locomotive.**
- M.3. Marine Shore Power Connection Systems and Truck Stop Electrification: EPA will fund up to 25% of the cost (labor and equipment) of an eligible shore connection system or truck stop electrification technology; recipient is responsible for cost-sharing at least 75% of the cost of an eligible shore connection system or truck stop electrification technology.
- M.4. Certified Engine Repower: EPA will fund up to 75% of the cost (labor and equipment) of an engine repower with a 2014 model year or newer certified engine; recipient is responsible for cost-sharing at least 25% of the cost of an eligible engine repower.
- M.5. Certified Vehicle/Equipment Replacement:
- M.5.1. *Stationary Generator or Agricultural Pump Replacement* : EPA will fund up to 75% of the cost of a replacement stationary generator or agricultural pump powered by a 2014 or newer certified nonroad engine; recipient is responsible for cost-sharing at least 25% of the cost of an eligible replacement generator or pump.
 - M.5.2. *All Other Nonroad Diesel Vehicle and Equipment Replacement* : EPA will fund up to 50% of the cost of a replacement vehicle or piece of equipment powered by a 2014 model year or newer certified nonroad engine; recipient is responsible for cost-sharing at least 50% of the cost of an eligible replacement vehicle or piece of equipment.
 - M.5.3. *Drayage Vehicle Replacement* : EPA will fund up to 50% of the cost of a replacement drayage truck powered by a 2011 model year or newer certified highway heavy-duty engine; recipient is responsible for cost-sharing at least 50% of an eligible drayage replacement vehicle.
 - M.5.4. *All Other Highway Diesel Vehicle Replacement* : EPA will fund up to 50% of the cost of a replacement Class 5 – Class 8 vehicle powered by a 2014 model year or newer certified highway heavy-duty engine; recipient is responsible for cost-sharing at least 50% of an eligible replacement vehicle.

The eligible acquisition cost for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance and freight may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

2. Competency of Organizations Generating and/or Using Environmental Measurement Data

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

Federal Assistance Agreement Funds Up To \$200,000

Recipient agrees that if the total federal funding obligated on this award exceeds \$200,000 (resulting from subsequent amendments to this agreement) and will involve the use or generation of environmental data it will (unless it has otherwise done so) demonstrate competency prior to carrying out any activities involving the generation or use of environmental data under this agreement.

Federal Assistance Agreement Funds Exceed or Expect to Exceed \$200,000

Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable. Recipient agrees to submit documentation and demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data.

R10 Quality Assurance Team Contact: Donald M. Brown at (206) 553-0717 or email:

brown.donaldM@epa.gov.

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